THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7568 of 2003

14.12.2005

Between:

Smt.K.Sadhana Nayak, W/o. Dr.K.Shivanand Nayak

And another

… Petitioners

AND

The Stateion House Officer, P.S. Banjara Hills

And another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7568 of 2003

ORDER:

The petitioners are accused in Crime No.92 of 2003 of P.S. Banjara Hills, Hyderabad. The second respondent herein lodged a complaint under Section 190 of the Criminal Procedure Code, 1973 (Cr.PC) on the file of the Court of V Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad. The learned Magistrate referred the same to the police under Section 154(3) Cr.PC and the police registered the crime. To quash the said crime, the present writ petition is filed.

The second respondent is a fashion designer. Her father was the patient of the second petitioner, who is a nephrologist. It appears that rapport developed between the petitioner and second respondent while the latter's father was under the treatment of the second petitioner. The petitioners used to visit the shop of the second respondent and also purchase some dresses on credit basis. The father of the second respondent died in July 2000. It is alleged that the second respondent then demanded payment of money from the petitioners and that the dues of Rs.4,00,000/- went up to Rs.8,00,000/- with interest. It is also alleged that so as to blackmail the petitioners, the second respondent filed a criminal complaint under Sections 120-B, 420 and 506 of Indian Penal Code, 1860 (IPC).

The learned Counsel for petitioners submits that the allegations made by the second respondent in her complaint before the criminal court are purely in the nature of a civil dispute and no crime is made out under Sections 420 or 506 of IPC. Secondly, he would urge that the allegations in the complaint, that the petitioners called up the second respondent in the midnight and that the petitioners threatened the friends and well-wishers of the second respondent with false criminal cases and thereby intimidated her, are vague and the ingredients of the offence under Section 506 IPC are not made out.

The learned Government Pleader for the first respondent submits that the police registered the crime as per the orders of the learned Metropolitan Magistrate and

took up investigation. The learned Counsel for the second respondent submits that when the investigation is pending, it would not be proper for this Court to quash the crime under Article 226 of Constitution of India (CoI) especially when the allegations of *mala fide* in the complaint are not demonstrated. He placed strong reliance on the decisions of the Supreme Court in **State of Punjab v Dharam Singh**, **Rajesh Bajaj v State NCT of Delhi** and **Zandu Pharmaceutical Works Ltd. v Mohd. Sharaful Haque**.

It is axiomatic that ordinarily in exercise of powers under Article 226 of CoI or under section 482 of Cr.PC, the High Court cannot quash the crime at the stage of investigation. This rule, however, has exceptions. The first exception is that if on a reading of the complaint, no crime is made out, the criminal complaint or FIR can be quashed applying the principles that criminal investigation if allowed would result in abuse of process of law and also miscarriage of justice. In the considered opinion of this Court, this is one case where this Court has to go by the allegations made in the complaint of the second respondent. The allegation of inducement to part with property on a false promise is conspicuous by its absence and it is an essential ingredient for an offence of cheating under Section 420 IPC. The allegations regarding criminal intimidation are vague and on those allegations investigation cannot be allowed. Reading the complaint of the second respondent as a whole, it becomes clear that dispute between the petitioners and the second respondent, if any, is a civil dispute for recovery of money and on such allegations, this Court cannot allow the criminal judicial process to be abused even if it is at the stage of investigation by the police.

The view as above is supported by the observations of the Supreme Court in **Zandu Pharmaceutical Works Ltd.** (supra) as follows.

> It would be an abuse of process of the court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that intimation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complainant, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In the result, for the above reasons, the writ petition is allowed and the Crime No.92 of 2003 of P.S. Banjara Hills, Hyderabad is quashed. There shall be no order as to costs.

(**V.V.S.RAO,J**)

December 14, 2005.

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